

Title 24-A: MAINE INSURANCE CODE
Chapter 83: CAPTIVE INSURANCE COMPANIES

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Maine Revised Statutes
Title 24-A: MAINE INSURANCE CODE
Chapter 83: CAPTIVE INSURANCE COMPANIES

§6701. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 435, §1 (NEW).]

1. Affiliated company. "Affiliated company" means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation or management.

[1997, c. 435, §1 (NEW) .]

2. Association. "Association" means any legal association of individuals, corporations, limited liability companies, partnerships or associations that have been in continuous existence for at least one year, the member organizations of which:

A. Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; [2009, c. 335, §1 (AMD).]

B. Have complete voting control over an association captive insurance company incorporated as a mutual or reciprocal insurer; or [2009, c. 335, §1 (AMD).]

C. Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer. [2009, c. 335, §1 (NEW).]

[2009, c. 335, §1 (AMD) .]

3. Association captive insurance company. "Association captive insurance company" means any company that insures risks of the member organizations of the association and their affiliated companies.

[1997, c. 435, §1 (NEW) .]

4. Captive insurance company. "Captive insurance company" means any pure captive insurance company, sponsored captive insurance company, association captive insurance company or industrial insured captive insurance company formed or licensed under this chapter.

[2009, c. 335, §2 (AMD) .]

5. Controlled unaffiliated business. "Controlled unaffiliated business" means a company that:

A. Is not in the corporate system of a parent and affiliated companies; [1997, c. 435, §1 (NEW) .]

B. Has an existing contractual relationship with a parent or affiliated company; and [1997, c. 435, §1 (NEW) .]

C. [2009, c. 335, §3 (RP) .]

D. Has all its risks managed by a pure captive insurance company in accordance with this chapter. [2009, c. 335, §4 (NEW) .]

[2009, c. 335, §§3, 4 (AMD) .]

6. Industrial insured. "Industrial insured" means an insured:

A. Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer; [1997, c. 435, §1 (NEW).]

B. Whose aggregate annual premium for insurance on all risks totals at least \$25,000; and [1997, c. 435, §1 (NEW).]

C. Who has at least 25 full-time employees. [1997, c. 435, §1 (NEW).]

[1997, c. 435, §1 (NEW) .]

7. Industrial insured captive insurance company. "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

[1997, c. 435, §1 (NEW) .]

8. Industrial insured group. "Industrial insured group" means any group that meets either of the following criteria:

A. A group of industrial insureds that collectively:

(1) Owns, controls or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer;

(2) Has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(3) Constitutes all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer; or [2009, c. 335, §5 (AMD).]

B. Any group created under the Product Liability Risk Retention Act of 1981, 15 United States Code, Section 3901 et seq., as amended, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the laws of the State. [1997, c. 435, §1 (NEW) .]

[2009, c. 335, §5 (AMD) .]

9. Member organization. "Member organization" means any individual, corporation, limited liability company, partnership or association that belongs to an association.

[2009, c. 335, §6 (AMD) .]

10. Parent. "Parent" means a corporation, limited liability company, partnership or individual that directly or indirectly owns, controls or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company organized as a stock corporation or 50% of the membership interests of a pure captive insurance company organized as a nonprofit corporation.

[2009, c. 335, §7 (AMD) .]

11. Pure captive insurance company. "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated businesses but does not include those insurers that otherwise qualify for and elect to hold a certificate of authority as an insurer under section 414. "Pure captive insurance company" includes, with respect to operations in this State unless otherwise restricted by the superintendent, a branch captive insurance company.

[2009, c. 335, §8 (AMD) .]

12. Pure nonprofit captive insurance company. "Pure nonprofit captive insurance company" means a pure captive insurance company formed without capital stock as a nonprofit corporation, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by a nonprofit parent, its or controlled unaffiliated business affiliated companies but does not include those insurers otherwise qualifying for a certificate of authority as an insurer.

[1997, c. 435, §1 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §§1-8 (AMD).

§6702. LICENSING; AUTHORITY

1. Authority. A captive insurance company may not engage in the business of insurance in this State unless the company:

A. Obtains a license from the superintendent authorizing the company to do insurance business in this State; [1997, c. 435, §1 (NEW).]

B. Holds at least one meeting of its board of directors, or other governing body, each year in this State. For pure captive insurance companies and pure nonprofit captive insurance companies, the annual in-state meeting requirement may be satisfied by a teleconferenced or videoconferenced meeting if at least one Maine resident member of the board of directors, or other governing body, participates in the meeting from this State; [1997, c. 583, §1 (AMD).]

C. Maintains its principal place of business in this State; and [1997, c. 435, §1 (NEW).]

D. Appoints a resident agent to accept service of process and to otherwise act on its behalf in this State. [1997, c. 435, §1 (NEW).]

[1997, c. 583, §1 (AMD) .]

2. Charter and bylaws. In order to receive a license, a captive insurance company must file with the superintendent a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition and any other statements or documents required by the superintendent.

[1997, c. 435, §1 (NEW) .]

3. Information required. In addition to the information required by subsection 2, an applicant captive insurance company must file with the superintendent evidence of the following:

A. The amount and liquidity of its assets relative to the risks to be assumed; [1997, c. 435, §1 (NEW) .]

B. The adequacy of the expertise, experience and character of the person or persons who will manage it; [1997, c. 435, §1 (NEW).]

C. The overall soundness of its plan of operation; [1997, c. 435, §1 (NEW).]

D. The adequacy of the loss prevention programs of its parent or member organizations, as applicable; [1997, c. 435, §1 (NEW).]

E. The character, reputation, financial standing and purposes of the incorporators; [1997, c. 435, §1 (NEW) .]

F. The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and [1997, c. 435, §1 (NEW).]

G. Any other factors determined relevant by the superintendent in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations. [1997, c. 435, §1 (NEW) .]

[1997, c. 435, §1 (NEW) .]

4. License. If the superintendent is satisfied that the documents and statements filed by the captive insurance company under subsections 2 and 3 comply with this chapter, the superintendent may grant a license authorizing it to do insurance business in accordance with this subsection.

A. A captive insurance company shall comply with all applicable federal laws. A captive insurance company, other than an association captive insurance company preliminarily conditionally approved for a license before January 1, 2012 and that elects to secure coverage in accordance with section 6706, subsection 2-A, shall comply with state and federal laws relating to the risks insured pursuant to the license granted by the superintendent to the extent provided in rules adopted pursuant to this chapter. [2011, c. 90, Pt. I, §1 (NEW).]

B. An association captive insurance company insuring the health coverage risks of its members shall comply with the requirements for community rating and guaranteed issuance and renewal for association members pursuant to section 2808-B and any requirements for mandated benefits that apply to small group health plans. [2011, c. 90, Pt. I, §1 (NEW).]

C. The superintendent shall grant a license to an association captive insurance company that files an application in accordance with this section and satisfies the following requirements:

(1) The association captive insurance company insures only health risks and requires participating association members to be jointly and severally liable in accordance with section 6706, subsection 2-A;

(2) The association captive insurance company's plan of operation is fiscally sound and establishes dispute resolution mechanisms acceptable to the superintendent in accordance with this section and designates a 3rd-party administrator approved by the superintendent; and

(3) The superintendent determines that the association members have an aggregate net worth of at least \$100,000,000. [2011, c. 90, Pt. I, §1 (NEW).]

[2011, c. 90, Pt. I, §1 (AMD) .]

5. Fees. A captive insurance company shall pay filing, issuance, annual continuation and reinstatement fees as provided for domestic insurers pursuant to section 601, subsection 1.

[1997, c. 435, §1 (NEW) .]

6. Activities.

[2009, c. 335, §9 (RP) .]

7. Permitted activities. A captive insurance company, when permitted by its articles of association or charter, may apply to the superintendent for a license to provide any insurance described in this Title, including annuities, except that:

A. A pure captive insurance company may not insure or reinsure any risks other than those of its parent and affiliated companies or controlled unaffiliated businesses; [2009, c. 335, §9 (AMD).]

B. An association captive insurance company may not insure or reinsure any risks other than those of the member organizations of its association and their affiliated companies; [2009, c. 335, §9 (AMD) .]

C. An industrial insured captive insurance company may not insure or reinsure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies; [2009, c. 335, §9 (AMD).]

D. A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or individual health insurance coverage or any component thereof; [2011, c. 90, Pt. I, §2 (AMD).]

E. A captive insurance company may not accept or cede reinsurance except as provided in section 6711; and [2009, c. 335, §9 (AMD).]

F. A captive insurance company may not provide workers' compensation insurance except for reinsurance of workers' compensation risk as permitted in section 6711. [2009, c. 335, §9 (NEW).]

[2011, c. 90, Pt. I, §2 (AMD).]

8. Certificate of good standing. Prior to its organization or incorporation with the Secretary of State, the organizers or incorporators of a captive insurance company shall petition the superintendent to issue a certificate stating the superintendent's finding that the establishment and continued existence of the proposed captive insurance company, however organized, will promote the general good of the State. In making such a finding, the superintendent shall consider:

A. The character, reputation, financial standing and purpose of the organizers or incorporators; [2009, c. 335, §9 (NEW).]

B. The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors of the proposed captive insurance company; and [2009, c. 335, §9 (NEW).]

C. Any other relevant information determined by the superintendent. [2009, c. 335, §9 (NEW).]

Any certificate issued by the superintendent pursuant to this subsection must be filed with the Secretary of State to be recorded with the articles of incorporation of the captive insurance company.

[2009, c. 335, §9 (NEW).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 1997, c. 583, §§1-3 (AMD). 2009, c. 335, §9 (AMD). 2011, c. 90, Pt. I, §§1, 2 (AMD).

§6703. NAMES OF COMPANIES

A captive insurance company may not adopt a name that is the same as, deceptively similar to or likely to be confused with or mistaken for any other existing business name registered in the State. [1997, c. 435, §1 (NEW).]

SECTION HISTORY

1997, c. 435, §1 (NEW).

§6704. MINIMUM CAPITAL AND SURPLUS

1. Minimum capital and surplus. A captive insurance company may not be issued a license unless the company has and maintains unimpaired paid-in capital and surplus of:

A. In the case of a pure captive insurance company, not less than \$250,000; [2009, c. 335, §10 (AMD).]

B. In the case of an association captive insurance company, not less than \$750,000, except for an association captive insurance company insuring only health risks that elects to secure coverage in accordance with section 6706, subsection 2-A, maintains adequate reserve funds and has reinsurance unless the superintendent waives or modifies the reinsurance requirement. Reserve funds are presumed adequate if the association members have an aggregate net worth of at least \$100,000,000 and the superintendent determines that the funds are adequate to cover at least 3 months of claims and expenses; [2011, c. 90, Pt. I, §3 (AMD).]

C. In the case of an industrial insured captive insurance company, not less than \$500,000; [2009, c. 335, §10 (AMD).]

D. In the case of a sponsored captive insurance company, not less than \$500,000; and [2009, c. 335, §10 (NEW).]

E. In the case of a risk retention group, not less than \$1,000,000. [2009, c. 335, §10 (NEW).]

The superintendent may prescribe additional capital based upon the type, volume and nature of insurance business transacted, except for an association captive health insurance company insuring only health risks that elects to secure coverage in accordance with section 6706, subsection 2-A.

[2011, c. 90, Pt. I, §3 (AMD).]

2. Letter of credit. The required capital may be in the form of cash, an irrevocable letter of credit issued by a bank chartered in this State or a member bank of the Federal Reserve System or any other security approved by the superintendent.

[1997, c. 435, §1 (NEW).]

3. Dividends. A captive insurance company may not pay a dividend out of or make any other distribution with respect to capital and surplus in excess of the limitations under section 222 without the prior approval of the superintendent. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital and surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the superintendent. Notwithstanding the provisions of Title 13-B or 13-C, a captive insurance company organized under the provisions of either Title may make such distributions as are in conformity with its purposes with the prior approval of the superintendent.

[2009, c. 335, §10 (AMD).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §10 (AMD). 2011, c. 90, Pt. I, §3 (AMD).

§6705. MINIMUM SURPLUS

(REPEALED)

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §11 (RP).

§6706. FORMATION OF CAPTIVE INSURANCE COMPANIES IN THIS STATE

1. Pure captive insurance company. A pure captive insurance company must be:

A. Incorporated as a stock insurer with capital divided into shares and held by the stockholders; [2009, c. 335, §12 (AMD).]

B. Incorporated as a nonprofit corporation whose votes of membership interest are held by a parent organization formed under a nonprofit law or by such nonprofit corporation with one or more members; or [2009, c. 335, §12 (AMD).]

C. Organized as a manager-managed limited liability company. [2009, c. 335, §12 (NEW).]

[2009, c. 335, §12 (AMD) .]

2. Association captive insurance company. An association captive insurance company or an industrial insured captive insurance company may be:

A. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; [2009, c. 1, §17 (COR).]

B. Incorporated as a mutual insurer without capital stock, the governing body of which must be elected by the member organizations of its association; [2009, c. 335, §12 (AMD).]

C. Organized as a reciprocal insurer in accordance with this Title; or [2009, c. 335, §12 (NEW).]

D. Organized as a manager-managed limited liability company. [2009, c. 335, §12 (NEW).]

[2009, c. 1, §17 (COR) .]

2-A. Association captive insurance company providing health insurance. An association captive insurance company that provides health insurance may elect to require, in its plan of operation, that all association members who participate in the health insurance be jointly and severally liable for the health insurance obligations of the association captive insurance company and meet the financial criteria and employer required wellness criteria established in the plan of operation. The wellness criteria may not have the effect of making health status a condition of eligibility for any association member. The superintendent may not require joint and several liability as a condition of approval of an application.

[2011, c. 90, Pt. I, §4 (NEW) .]

3. Incorporators. A captive insurance company may not have fewer than 3 incorporators or 3 organizers of whom at least one must be a resident of this State. If the captive insurance company is a limited liability company, at least one manager must be a resident of this State.

[2009, c. 335, §12 (AMD) .]

4. Applicability of chapter 47. To the extent consistent with this chapter, a captive insurance company is subject to the procedures applicable to domestic insurers pursuant to chapter 47 except that, if the surviving entity after a merger, consolidation, conversion or mutualization is a captive insurance company, a captive insurance company is subject to this chapter. With respect to mergers, consolidations, conversions and mutualizations, the superintendent, in the superintendent's discretion, may:

A. Waive any public hearing requirement; [2009, c. 335, §12 (NEW).]

B. Permit an alien insurer as a party to a merger as long as the requirements for a merger between a captive insurance company and a foreign insurer apply. For the purposes of this paragraph, an alien insurer must be treated as a foreign insurer and the jurisdiction of the alien insurer is considered a state; or [2009, c. 335, §12 (NEW).]

C. Approve the conversion of a captive insurance company organized as a stock insurer to a nonprofit corporation with one or more members or a limited liability company. [2009, c. 335, §12 (NEW).]

[2011, c. 90, Pt. I, §5 (AMD) .]

5. Issuance of stock. If the capital stock of a captive insurance company incorporated as a stock insurer is issued at par value, stock may not be issued at less than par value.

[2009, c. 335, §12 (AMD) .]

6. Board of directors. If a captive insurance company incorporated in this State is formed as a corporation, then at least one of the members of the board of directors of the company incorporated in this State must be a resident of this State. If the company is formed as a reciprocal insurer, then at least one of the members of the subscribers' advisory committee must be a resident of this State. If the company is organized as a limited liability company, then at least one manager must be a resident of this State.

[2013, c. 588, Pt. A, §30 (AMD) .]

7. Captive insurance company. A captive insurance company formed under this chapter, except for a pure nonprofit captive insurance company, has the privileges granted by and is subject to Title 13-C and this chapter. In the event of conflict between Title 13-C and this chapter, this chapter controls.

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §45 (COR) .]

8. Pure nonprofit captive insurance company. A pure nonprofit captive insurance company formed under this chapter has the privileges granted by and is subject to Title 13-B and this chapter. In the event of conflict between Title 13-B and this chapter, this chapter controls.

[1997, c. 435, §1 (NEW) .]

9. Quorum. If formed as a corporation, the articles of incorporation or bylaws of a captive insurance company may authorize a quorum of its board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Title 13-B or 13-C. If formed as a reciprocal insurer, the subscribers' agreement or other organizing document may authorize a quorum of its subscribers' advisory committee to consist of no fewer than 1/3 of the number of its members.

[2009, c. 335, §12 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B45 (COR). RR 2009, c. 1, §17 (COR). 2009, c. 335, §12 (AMD). 2011, c. 90, Pt. I, §§4, 5 (AMD). 2013, c. 588, Pt. A, §30 (AMD).

§6707. FINANCIAL STATEMENTS AND OTHER REPORTS

1. Financial statement. A captive insurance company shall submit an annual statement of financial condition written according to generally accepted accounting principles and audited by an independent certified public accountant to the superintendent on or before the last day of the 6th month following the end of the company's fiscal year.

[1997, c. 435, §1 (NEW) .]

2. Annual report. An association captive insurance company or industrial insured captive insurance company shall file an annual statement in accordance with statutory accounting practices, which must be a true statement of its financial condition, transactions and affairs as of the immediately preceding December 31st, in general form and context as approved by the National Association of Insurance Commissioners, or other format prescribed by the superintendent, verified by oaths of at least 2 of the insurer's principal officers.

[1997, c. 583, §4 (AMD) .]

3. Reserves. The statements required under subsections 1 and 2 must include, but are not limited to, actuarially appropriate reserves for:

- A. Known claims and associated expenses; [1997, c. 435, §1 (NEW).]
- B. Claims incurred but not reported and associated expenses; [1997, c. 435, §1 (NEW).]
- C. Unearned premiums; and [1997, c. 435, §1 (NEW).]
- D. Bad debts, reserves for which must be shown as liabilities. [1997, c. 435, §1 (NEW).]

An actuarial opinion regarding reserves for known claims and claims incurred but not reported, and expenses associated with those claims, must be included in the audited statements. The actuarial opinion must be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

[1997, c. 435, §1 (NEW) .]

4. Other reports. The superintendent may prescribe the format and frequency of other reports, which may include, but are not limited to, summary loss reports and quarterly financial statements.

[1997, c. 435, §1 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 1997, c. 583, §4 (AMD).

§6708. EXAMINATIONS AND INVESTIGATIONS

1. Powers, authorities and duties of superintendent. The powers, authorities and duties relating to examinations and investigations are vested in and imposed upon the superintendent in order for the superintendent to verify that all captive insurance companies operate in accordance with the provisions of this chapter.

[2011, c. 90, Pt. I, §6 (AMD) .]

2. Confidentiality of examinations documents. All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of any of these produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent provided in this subsection. The superintendent may grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the Federal Government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this subsection.

[1997, c. 435, §1 (NEW) .]

3. Examinations. At least once in 3 years, and whenever the superintendent determines it to be prudent, the superintendent shall personally, or by some competent person appointed by the superintendent, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The superintendent may enlarge the 3-year period to 5 years, as long as the captive insurance company is

subject to a comprehensive annual audit during the period of a scope satisfactory to the superintendent by independent auditors approved by the superintendent. The expenses and charges of the examination must be paid to the State by the company or companies examined.

[2009, c. 335, §13 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §13 (AMD). 2011, c. 90, Pt. I, §6 (AMD).

§6709. GROUNDS AND PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSE

1. Grounds for suspension or revocation. The superintendent may suspend or revoke the license of a captive insurance company for any of the following reasons:

- A. Insolvency or impairment of capital or surplus; [1997, c. 435, §1 (NEW).]
- B. Failure to meet the requirements of section 6704; [2009, c. 335, §14 (AMD).]
- C. Refusal or failure to submit an annual report required by section 6707 or any other report or statement required by law or by lawful order of the superintendent; [1997, c. 435, §1 (NEW).]
- D. Failure to comply with the provisions of the company's charter or bylaws or other organizational document; [2009, c. 335, §15 (AMD).]
- E. Failure to submit to examination or any legal obligation as required by section 6708; [1997, c. 435, §1 (NEW).]
- F. Refusal or failure to pay the cost of examination required by sections 228 and 6708; [1997, c. 435, §1 (NEW).]
- G. Use of methods that, although not otherwise specifically prohibited by law, nevertheless render the company's operation detrimental or the company's condition unsound with respect to the public or to its policyholders; [1997, c. 435, §1 (NEW).]
- H. Failure to maintain actuarially appropriate loss reserves as determined by the superintendent, except that the superintendent shall issue at least one warning to the captive insurance company requiring it to correct the problem prior to suspending or revoking the license; and [1997, c. 435, §1 (NEW).]
- I. Failure otherwise to comply with the laws of this State. [1997, c. 435, §1 (NEW).]

[2009, c. 335, §§14, 15 (AMD) .]

2. Procedure. Notwithstanding any other law, if the superintendent, upon examination, hearing or other evidence, finds that a captive insurance company has committed any of the acts specified in subsection 1, the superintendent may suspend or revoke the license if the superintendent determines that it is in the best interest of the public and the policyholders of the captive insurance company.

[1997, c. 435, §1 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §§14, 15 (AMD).

§6710. LEGAL INVESTMENTS

A pure captive insurance company is not subject to any restrictions on allowable investments including those provided under chapter 13 and chapter 13-A, except that the superintendent may prohibit or limit any investment that threatens the solvency or liquidity of such insurance company. A pure captive insurance company may not make a loan to or investments in its parent or affiliated companies without the prior written approval of the superintendent. A loan of any minimum capital and surplus funds required by section 6704 is prohibited. Except as otherwise authorized by the superintendent, association captive insurance companies and industrial insured captive insurance companies are subject to the restrictions on allowable investments applicable to admitted insurers transacting the same type of business. With respect to investments of association captive insurance companies, the superintendent may approve the use of alternative methods of valuation and rating. [2009, c. 335, §16 (AMD).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §16 (AMD).

§6711. REINSURANCE

1. Reinsurance. A captive insurance company may provide reinsurance on risks ceded by any other insurer to the extent permitted by section 6702.

[2009, c. 335, §17 (AMD).]

2. Credit for reserves. A captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a reinsurer in accordance with this Title. A captive insurance company may not cede risks or take credit for the reinsurance of risks or portions of risk without the approval of the superintendent, except for business written outside the United States by an alien captive insurance company.

[2009, c. 335, §18 (AMD).]

3. Credit for reserves on risks; adequate security. In addition to reinsurers complying with chapter 9, subchapter III, a captive insurance company may take credit for reserves on risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer that has been authorized by the superintendent. The superintendent may require any other documents, financial information or other evidence that such a pool, exchange or association is able to provide adequate security for its financial obligations. The superintendent may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the superintendent's judgment are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and benefit of the public.

[1997, c. 435, §1 (NEW).]

4. Reinsurance of workers' compensation risks. A captive insurance company may, with the approval of the superintendent, reinsure workers' compensation risks of its parent and affiliated companies under a statutory workers' compensation policy issued by a licensed insurer or under a qualified self-insured plan. The superintendent may require that all or part of any assumed self-insured risk be retroceded to an insurance company that meets the standards for acceptance of reinsurance of workers' compensation self-insurance.

[2009, c. 335, §19 (AMD).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §§17-19 (AMD).

§6712. RATING ORGANIZATIONS

A captive insurance company is not required to become a member of a rating organization. [1997, c. 435, §1 (NEW).]

SECTION HISTORY

1997, c. 435, §1 (NEW).

§6713. EXEMPTION FROM COMPULSORY ASSOCIATIONS

A captive insurance company may not join or contribute financially to any plan, pool, association or guaranty or insolvency fund in this State, and a captive insurance company and its insureds, its parent or any affiliated company or member organization of its association may not receive any benefit from the plan, pool, association or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company. [1997, c. 435, §1 (NEW).]

SECTION HISTORY

1997, c. 435, §1 (NEW).

§6714. DELINQUENT CAPTIVE INSURERS

The provisions of chapter 57 apply to captive insurers. [2009, c. 335, §20 (AMD).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2009, c. 335, §20 (AMD).

§6715. CONFIDENTIAL INFORMATION

All information submitted to the superintendent pursuant to section 6702, subsection 3 is confidential and is not a public record within the meaning of Title 1, chapter 13, subchapter I. Each report or statement filed with the superintendent pursuant to section 6707, except those filed by or with respect to industrial insured groups as defined in section 6701, subsection 8, is confidential and is not a public record within the meaning of Title 1, chapter 13, subchapter I. The confidential nature of this information does not limit the ability of the superintendent, in the superintendent's discretion, to disclose such information to a public official in another state, as long as the public official agrees in writing to maintain the confidentiality of such information and the laws of the state in which the public official serves designate such information as confidential. [1997, c. 583, §5 (AMD).]

SECTION HISTORY

1997, c. 435, §1 (NEW). 1997, c. 583, §5 (AMD).

§6716. REDOMESTICATION; APPROVAL AS A DOMESTIC CAPTIVE INSURER

1. Procedure. A foreign or alien captive insurance company may become a domestic captive insurance company by:

A. Complying with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type and any requirements that the superintendent may adopt by rule; [1997, c. 435, §1 (NEW).]

B. Amending the articles of incorporation or other organizational document to comply with the laws of this State. The document must be restated in its entirety before its submission to the superintendent. Before the amended and restated articles of incorporation or other organizational document is transmitted to the Secretary of State, the foreign or alien captive insurance company shall petition the superintendent to issue a certificate setting forth the superintendent's finding that the redomestication and

maintenance of the corporation satisfies paragraph A and will promote the general good of the State. The company's petition must be accompanied by a redomestication fee of \$500. In arriving at the finding, the superintendent shall consider:

- (1) The character, reputation, financial standing and purposes of the foreign or alien captive insurance company;
- (2) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and
- (3) Any other aspects the superintendent determines advisable; [1997, c. 435, §1 (NEW) .]

C. Transmitting the following to the Secretary of State for filing:

- (1) The articles of redomestication including the filing fee as provided by either Title 13-B, section 1401, subsection 13 or Title 13-C, section 123, subsection 1, paragraph L and this information required by a new domestic or domestic nonprofit corporation on a form prescribed by the Secretary of State;
- (2) The certificate of general good issued by the superintendent;
- (3) The certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which the foreign or alien captive insurance company is incorporated. The certificate may not be dated earlier than 30 days prior to the filing of the articles of redomestication. If the certificate of good standing is in a foreign language, a translation under oath of the translator must accompany the certificate;
- (4) Amendments to the articles of incorporation or other organizational document in compliance with the laws of this State; and
- (5) The restatement of the articles of incorporation or other organizational document in its entirety; and [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §46 (COR).]

D. Stating in the articles of redomestication:

- (1) The name of the corporation;
- (2) The date of incorporation and state or country of incorporation;
- (3) The street address of the principal office in this State;
- (4) The names and titles of the officers and directors of the corporation;
- (5) A statement that the corporation is moving its domicile from its present state or country to this State;
- (6) A statement that redomestication will occur upon filing the articles of redomestication and that the corporation is subject to the laws of this State; and
- (7) A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the state or country under the laws of which the corporation is incorporated are attached. If any of these documents are in a foreign language, a translation under oath of the translator must accompany these documents. [1997, c. 435, §1 (NEW) .]

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §46 (COR) .]

2. Licensure. Upon payment to the superintendent of the issuance fee set forth in section 601, subsection 1, the domestic captive insurance company is entitled to the necessary or appropriate certificates and licenses to do business in this State and is subject to the authority and jurisdiction of this State. A captive insurance company redomesticating into this State need not merge, consolidate, transfer assets or otherwise engage in any other reorganization other than as specified in this section.

[1997, c. 435, §1 (NEW) .]

3. Rights and privileges; liabilities. Upon redomestication in accordance with this section, the foreign or alien captive insurance company becomes a domestic captive insurance company organized under the laws of this State and has all the rights, privileges, immunities and powers and is subject to all applicable laws, duties and liabilities of a domestic captive insurance company of the same type. The domestic captive insurance company possesses all rights that it had prior to the redomestication to the extent permitted by the laws of this State and is responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company remain in full force and effect.

[1997, c. 435, §1 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B46 (COR).

§6717. REDOMESTICATION; CONVERSION TO FOREIGN INSURER

1. Transfer of domicile. A domestic captive insurance company, upon approval by the superintendent, may transfer its domicile to any other jurisdiction in accordance with the laws of that jurisdiction.

[1997, c. 435, §1 (NEW) .]

2. Notice of intent to transfer required. Before transferring its domicile to any other jurisdiction and before the notice of change in domicile is transmitted to the Secretary of State, the domestic captive insurance company shall deliver to the superintendent a notice of intent to transfer, along with payment of a transfer fee of \$500, and shall petition the superintendent to issue a certificate of transfer.

[1997, c. 435, §1 (NEW) .]

3. Contents of notice. The notice of change in domicile, the certificate of transfer issued by the superintendent, the proof of redomestication and the filing fee of either \$35 in the case of a company governed by Title 13-C or \$5 in the case of a company governed by Title 13-B must be transmitted to the Secretary of State. The notice of the change in domicile must contain the following:

A. Name of the corporation; [1997, c. 435, §1 (NEW).]

B. Dates that notice of the corporation's intent to transfer domicile from this State was published, once in each of 4 successive weeks in 4 publications in a newspaper of general circulation published in this State; [1997, c. 435, §1 (NEW).]

C. Date of the transfer of its domicile; and [1997, c. 435, §1 (NEW).]

D. State or country to which its domicile will be transferred. [1997, c. 435, §1 (NEW).]

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §47 (COR) .]

4. Effect of transfer. Upon any transfer authorized pursuant to this section, the captive insurance company ceases to be domiciled in this State, and its corporate or other legal existence in this State ceases upon the filing of the notice under this section by the Secretary of State.

[2009, c. 56, §20 (AMD) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B47 (COR). 2009, c. 56, §20 (AMD).

§6718. RULES

1. Authority. The superintendent may adopt rules to implement this chapter. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 238, Pt. E, §5 (NEW) .]

2. Risk retention groups. Notwithstanding section 6719, the superintendent shall adopt rules establishing financial standards and corporate governance standards for captive insurance companies that are risk retention groups as defined in section 6093, subsection 13. Such rules may include, but are not limited to, rules making specified provisions of this Title applicable to captive insurance companies that are risk retention groups, subject to any modifications that the superintendent determines to be appropriate to the nature of a risk retention group's business. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 238, Pt. E, §5 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2011, c. 90, Pt. I, §7 (AMD). 2013, c. 238, Pt. E, §5 (RPR).

§6719. LAWS APPLICABLE

An insurance law of this State, other than described or referenced in this chapter, does not apply to a captive insurance company. This exclusion must be strictly construed so as to further the public policy in favor of providing alternative means for providing insurance coverage. [2011, c. 90, Pt. I, §8 (AMD) .]

SECTION HISTORY

1997, c. 435, §1 (NEW). 2011, c. 90, Pt. I, §8 (AMD).

§6720. FEES, TAXES AND ASSESSMENTS

Except as otherwise specified in this chapter, all fees, taxes and assessments as set out in sections 237, 601 and 602 apply to captive insurers in the same manner as they apply to other insurers. [1997, c. 435, §1 (NEW) .]

SECTION HISTORY

1997, c. 435, §1 (NEW).

§6721. RULES FOR CONTROLLED UNAFFILIATED BUSINESS

The superintendent may adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company. In the absence of any rules, the superintendent may approve

the coverage of such risks by a pure captive insurance company upon request. Any rules adopted by the superintendent pursuant to this section are routine technical rules as described in Title 5, chapter 375, subchapter 2-A. [2009, c. 335, §21 (NEW).]

SECTION HISTORY

2009, c. 335, §21 (NEW).

§6722. CONVERSION TO OR MERGER WITH RECIPROCAL INSURER

1. Authority for conversion or merger. A captive insurance company, association captive insurance company or industrial insured captive insurance company formed as a stock or mutual insurer may convert to or merge with a reciprocal insurer with the approval of the superintendent in accordance with a plan of operation and with the requirements of this section. Any plan for conversion or merger must provide a fair and equitable mechanism for purchasing, retiring or otherwise extinguishing the interests of stockholders and policyholders of a stock insurer and the interests of members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members or policyholders.

[2009, c. 335, §22 (NEW) .]

2. Conversion. The superintendent may not approve a plan of conversion unless the plan:

A. Provides notice of the opportunity to request a hearing to directors, officers, stockholders, members and policyholders of the captive insurance company. If no request for a hearing is received, the superintendent is not required to hold a hearing in the superintendent's discretion; [2009, c. 335, §22 (NEW) .]

B. Provides a fair and equitable plan for the conversion of stockholder, member or policyholder interests into subscriber interests in the resulting reciprocal insurer in a substantially proportionate manner to the corresponding interest in the stock or mutual insurer except that the resulting reciprocal insurer is not precluded from applying underwriting criteria that may affect ongoing ownership interests; [2009, c. 335, §22 (NEW) .]

C. In the case of a stock insurer, has been approved by a majority of voting shares represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; and [2009, c. 335, §22 (NEW) .]

D. In the case of a mutual insurer, has been approved by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present. [2009, c. 335, §22 (NEW) .]

The superintendent shall approve a plan of conversion if the superintendent finds that the conversion will promote the general good of the State in conformity with this chapter. If the superintendent approves the plan, the superintendent shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the converting insurer's designated attorney. The conversion is effective upon the issuance of the amended certificate of authority by the superintendent. Upon the conversion, the corporate existence of the converting insurer ceases and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

[2009, c. 335, §22 (NEW) .]

3. Merger. A plan of merger may not be approved by the superintendent unless the plan of merger satisfies the same requirements in subsection 2, paragraphs A to D. The superintendent may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitation of a transaction under this section except that no more than one authorized insurance company may survive the merger. An alien insurer

may be a party to a merger authorized under this section if the requirements of this Title for a merger between a domestic and foreign insurer are met. For the purposes of this section, the alien insurer is treated as a foreign insurer and the jurisdiction of the alien insurer is considered a state.

[2009, c. 335, §22 (NEW) .]

4. Effect. A conversion or merger pursuant to this section has all of the effects of a conversion or merger approved pursuant to this Title to the extent that such effects are not inconsistent with the provisions of this chapter.

[2009, c. 335, §22 (NEW) .]

SECTION HISTORY

2009, c. 335, §22 (NEW) .

§6724. SPONSORED CAPTIVE INSURANCE COMPANIES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Participant" means an entity as described in subsection 6, and any affiliates thereof, that are insured by a sponsored captive insurance company. [2009, c. 335, §23 (NEW) .]

B. "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant. [2009, c. 335, §23 (NEW) .]

C. "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts. [2009, c. 335, §23 (NEW) .]

D. "Sponsor" means an entity that meets the requirements of subsection 5 and is approved by the superintendent to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company. [2009, c. 335, §23 (NEW) .]

E. "Sponsored captive insurance company" means a captive insurance company:

- (1) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
- (2) That is formed or licensed under the provisions of this chapter;
- (3) That insures the risks only of its participants through separate participant contracts; and
- (4) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account. [2009, c. 335, §23 (NEW) .]

[2009, c. 335, §23 (NEW) .]

2. Formation. One or more sponsors may form a sponsored captive insurance company under this chapter. In addition to the general provisions of this chapter, the provisions of this section apply to sponsored captive insurance companies. A sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholder, as a nonprofit corporation with one or more members or as a manager-managed limited liability company.

[2009, c. 335, §23 (NEW) .]

3. Supplemental application materials. In addition to the information required by section 6702, each applicant sponsored captive insurance company shall file with the superintendent the following:

- A. Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the superintendent and how it will report the experience to the superintendent; [2009 , c. 335 , §23 (NEW) .]
- B. A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, will be made available for inspection or examination by the superintendent or the superintendent's designated agent; [2009 , c. 335 , §23 (NEW) .]
- C. All contracts or sample contracts between the sponsored captive insurance company and any participants; and [2009 , c. 335 , §23 (NEW) .]
- D. Evidence that expenses will be allocated to each protected cell in a fair and equitable manner. [2009 , c. 335 , §23 (NEW) .]

[2009 , c. 335 , §23 (NEW) .]

4. Protected cells. A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

- A. The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors, except that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the superintendent; [2009 , c. 335 , §23 (NEW) .]
- B. Each participant contract must specify one or more protected cells as the sole source of the participant's coverage and limit the losses of the participant to its pro rata share of the assets of the protected cell identified in the contract. If the sponsored captive insurance company enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for apportionment of the rights and obligations between protected cells; [2009 , c. 335 , §23 (NEW) .]
- C. Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of each protected cell, net income or loss, dividends or other distributions to participants and such other factors as may be provided in the participant contract or required by the superintendent; [2009 , c. 335 , §23 (NEW) .]
- D. The assets of a protected cell may not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct; [2009 , c. 335 , §23 (NEW) .]
- E. A sale, exchange or other transfer of assets may not be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells; [2009 , c. 335 , §23 (NEW) .]
- F. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell to a sponsor or participant without the superintendent's approval and in no event may approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell; [2009 , c. 335 , §23 (NEW) .]
- G. Each sponsored captive insurance company must annually file with the superintendent such financial reports as the superintendent requires, which must include, without limitation, accounting statements detailing the financial experience of each protected cell; [2009 , c. 335 , §23 (NEW) .]
- H. Each sponsored captive insurance company must notify the superintendent in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; [2009 , c. 335 , §23 (NEW) .]

I. A participant contract may not take effect without the superintendent's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell constitutes a change in the business plan requiring the superintendent's prior written approval; [2009, c. 335, §23 (NEW) .]

J. The business written by a sponsored captive insurance company, with respect to each protected cell, must be:

- (1) Fronted by a properly licensed insurance company;
- (2) Reinsured by a reinsurer authorized or approved by the superintendent; or
- (3) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the superintendent. The amount of security provided must be no less than the reserves associated with those liabilities that are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The superintendent may require the sponsored captive insurance company to increase the funding of any security arrangement established under this subparagraph. If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed by a bank chartered in this State or a member of the Federal Reserve System and established in a form and upon such terms approved by the superintendent; [2009, c. 335, §23 (NEW) .]

K. In any action or proceeding involving the potential for monetary recovery by or against a sponsored captive insurance company or for nonmonetary relief relating to a particular protected cell or cells, any process, pleading or order must name the specific protected cell or cells affected, including if applicable the general account; and [2009, c. 335, §23 (NEW) .]

L. A sponsored captive insurance company shall notify the superintendent in writing within 10 business days after the special purpose reinsurance vehicle or any protected cell becomes impaired or insolvent. [2009, c. 335, §23 (NEW) .]

[2009, c. 335, §23 (NEW) .]

5. Qualification of sponsors. A sponsor of a sponsored captive insurance company must be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this chapter, a broker-dealer licensed pursuant to the Maine Uniform Securities Act, a financial institution or financial institution holding company authorized under Title 9-B, including any affiliate or subsidiary of such financial institution holding company, or any other person approved by the superintendent in the exercise of the superintendent's discretion after finding that the approval of a person as a sponsor is not inconsistent with the purposes of this chapter. A risk retention group authorized pursuant to chapter 72-A may not be either a sponsor or a participant of a sponsored captive insurance company.

[2009, c. 335, §23 (NEW) .]

6. Participants in sponsored captive insurance companies. The following may be participants in a sponsored captive insurance company:

- A. Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter; [2009, c. 335, §23 (NEW) .]
- B. A sponsor may be a participant in a sponsored captive insurance company; [2009, c. 335, §23 (NEW) .]
- C. A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof; and [2009, c. 335, §23 (NEW) .]

D. A participant may insure only its own risks through a sponsored captive insurance company.
[2009, c. 335, §23 (NEW).]

[2009, c. 335, §23 (NEW) .]

7. Investments by sponsored captive insurance companies. Notwithstanding the provisions of subsection 5, the assets of 2 or more protected cells may be combined for purposes of investment, and such a combination may not be construed as defeating the segregation of assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in this Title, as applicable, except that compliance with such investment requirements must be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 6711 or to the extent otherwise considered reasonable and appropriate by the superintendent. Section 6707 applies to sponsored captive insurance companies except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this Title, the superintendent may approve the use of alternative reliable methods of valuation and rating.

[2009, c. 335, §23 (NEW) .]

8. Delinquency of sponsored captive insurance companies or protected cells. In the case of a sponsored captive insurance company, the provisions of section 6714 apply, except as otherwise provided in this subsection.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the sponsored captive insurance company itself. The insolvency of a sponsored captive insurance company does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation. [2009, c. 335, §23 (NEW) .]

B. Notwithstanding the insolvency of the sponsored captive insurance company or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they become due. [2009, c. 335, §23 (NEW) .]

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the sponsored captive insurance company generally, except that:

(1) If the insolvency of the sponsored captive insurance company renders a protected cell incapable of being managed independently, a receiver may, after consultation with the creditors of a protected cell, contract for the management of the protected cell and charge to the protected cell a reasonable amount for those services;

(2) A general liability of an insolvent sponsored captive insurance company may be apportioned equitably in whole or in part to one or more of its protected cells if the Superior Court determines that the liability arises out of the operations of the protected cell or cells and that the interests of innocent creditors of the protected cell or cells are not unreasonably impaired; and

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract. [2009, c. 335, §23 (NEW) .]

D. The plan of rehabilitation or liquidation of any sponsored captive insurance company must make reasonable provision for the continued operation of all solvent protected cells, which may involve the formation of one or more new sponsored captive insurance companies or the transfer of one or more protected cells. [2009, c. 335, §23 (NEW) .]

[2009, c. 335, §23 (NEW) .]

SECTION HISTORY

2009, c. 335, §23 (NEW).

§6725. BRANCH CAPTIVE INSURANCE COMPANIES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the superintendent on companies transacting the business of insurance in the alien jurisdiction. [2009, c. 335, §24 (NEW).]

B. "Branch business" means any insurance business transacted by a branch captive insurance company in this State. [2009, c. 335, §24 (NEW).]

C. "Branch captive insurance company" means any alien captive insurance company licensed by the superintendent to transact the business of insurance in this State through a business unit with a principal place of business in this State. [2009, c. 335, §24 (NEW).]

D. "Branch operations" means any business operations of a branch captive insurance company in this State. [2009, c. 335, §24 (NEW).]

[2009, c. 335, §24 (NEW) .]

2. Establishment of a branch captive insurance company. A branch captive insurance company may be established in this State in accordance with the provisions of this chapter to write in this State only insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies. A branch captive insurance company may not do any insurance business in this State unless it maintains the principal place of business for its branch operations in this State.

[2009, c. 335, §24 (NEW) .]

3. Security required. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the superintendent shall require that either a trust fund funded by assets acceptable to the superintendent or an irrevocable letter of credit be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of the security may be no less than the amount set forth in section 6704, subsection 1, paragraph A and the reserves on the insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operation, except that the superintendent may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account or the amount payable under the irrevocable letter of credit required by this subsection by the same amount as long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this State or a member bank of the Federal Reserve System.

[2009, c. 335, §24 (NEW) .]

4. Certificate of general good. In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the superintendent to issue a certificate setting forth the superintendent's finding that, after considering the character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors of the alien

captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the State. The alien captive insurance company may register to do business in this State after the superintendent's certificate is issued.

[2009, c. 335, §24 (NEW) .]

5. Reports. Prior to March 1st of each year, or with the approval of the superintendent within 60 days after its fiscal year-end, a branch captive insurance company shall file with the superintendent a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of 2 of its executive officers. If the superintendent is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the superintendent may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

[2009, c. 335, §24 (NEW) .]

6. Examination of branch captive insurance companies. The examination of a branch captive insurance company pursuant to section 6708 must be of the branch business and branch operations only, as long as the branch captive insurance company provides annually to the superintendent a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed and demonstrates to the superintendent's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction. As a condition of licensure, the alien captive insurance company must grant authority to the superintendent for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

[2009, c. 335, §24 (NEW) .]

SECTION HISTORY

2009, c. 335, §24 (NEW) .

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